



POSTAL SERVICE

39 CFR Part 111

Balloting Materials Postage

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 703.8.0 to require that all ballot types include in the balloting materials a marking to indicate that the proper amount of postage must be paid and the balloting materials must also indicate the specific amount of postage for the return of ballots, unless mailed under certain specified exceptions.

DATES: *Effective date:* October 7, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Monteith at (202) 268-6983, or Garry Rodriguez at 202-268-7281.

SUPPLEMENTARY INFORMATION: On May 2, 2013, the Postal Service published a proposed rule (78 FR 25677-25678) inviting comments on revisions to the standards for balloting materials. In response to this proposed rule, the Postal Service received several comments that are summarized and discussed below.

After considering the comments received, the Postal Service will revise the DMM to require that the balloting materials for all types of ballots, whether disseminated hardcopy or electronically, must indicate in a prominent location the proper amount of First-Class Mail® postage that must be paid. This information

must be included in the balloting materials (i.e., on the ballot, ballot instructions, mailing instructions, or the envelope) with the marking “First-Class Mail postage must be applied.” Alternatively, the marking “Apply First-Class Mail postage here” could be printed in the upper right corner of the address side of the envelope used by the voter to return the ballot to election officials. The Postal Service will also accept approved variations of the above markings.

Additionally, this final rule requires that the balloting materials indicate in a prominent location the specific amount of First-Class Mail postage required for the return of the ballot to election officials.

The marking requirements will not apply to balloting materials that meet one of the following exceptions:

- The balloting materials are qualified under the special exemption for military and overseas voting.
- The ballot is returned under Business Reply Mail® service.
- Return postage is guaranteed through a postage due account.
- Postage on the ballot is prepaid by stamps, meter, or Permit Reply Mail.

Comments and Discussion

The Postal Service received fourteen formal responses to the proposed rule. Thirteen responses were received from State election officials and one comment was received from a consumer. Several responses included comments about more than one issue. Comments and responses are as follows.

One commenter pointed out that in the preamble the word “sufficient” was included in the markings to indicate that the proper amount of postage must be paid, but was omitted in the proposed text of DMM 703.8.1.2. We regret any confusion, and note that the word “sufficient” will not be required in the markings required by the final rule.

Some commenters indicated that they are already including different variations of the proposed markings. The Postal Service appreciates this proactive approach and will make the necessary changes to also allow the use of approved versions.

One commenter questioned the requirement to indicate the specific amount of postage required, based on the current use of Forever[™] stamps. The value of a Forever stamp is widely publicized as the current First-Class Mail single-piece 1-ounce price. When a Forever stamp is used on a piece requiring postage greater than the First-Class Mail single-piece 1-ounce price, additional postage must be affixed.

Other commenters voiced practical concerns about the requirement to indicate the specific amount of postage for the return of the ballot. These concerns included the need to order election envelopes in bulk, management of excess inventory, and the effect of annual price changes. In response to these concerns, the definition of “balloting materials” has been broadened to include “mailing instructions.” This will provide election officials an alternative to printing the markings on the ballot, voting instructions, or return envelope.

Some commenters expressed concerns regarding the ability of election officials to determine the specific postage required to return the ballot. The amount of postage communicated to voters should be based only on what is required to be returned. Local postal personnel are available to work with election officials to determine the amount of postage which should be applied.

One commenter suggested the use of a static URL or telephone number in lieu of the proposed markings. We believe that placing the correct postage due notification in a prominent location within the balloting materials will have higher visibility and encourage voter compliance. A link to an ancillary information source may be provided as a supplement.

One commenter raised concerns over the ability to provide the postage amount for the return of the ballot on electronic ballots that are printed by the voter. The Postal Service recognizes the potential for inconsistency when voters self-print ballots and use unspecified paper and envelope configurations. The Postal Service recommends that election officials include a supplementary notification specifically directed to voters who self-print and return ballots, such as: "Please be sure to affix the correct amount of First-Class Mail postage when returning ballots through the U.S. Mail."

Some commenters suggested an exception to the proposed requirements should be made based on an arrangement with the USPS® to pay for all ballots returned with insufficient postage. The Postal Service recognizes and appreciates the local partnerships that many election officials have with the

Postal Service. Therefore, we have included use of a postage due account to pay postage due on all short-paid ballots as an exception to the markings.

One commenter questioned the means of verification to ensure compliance with the marking requirements. As part of the verification procedure, mailers are required to provide a sample of balloting materials to the Business Mail Entry Unit (BMEU) at the time of mailing. If a sample is not provided, BME staff will contact the mail provider or mail owner and request that the required sample be provided to the BMEU the same day. To ensure consistency and provide clarity, the requirement to provide a sample with each mailing will be added to the DMM.

One commenter questioned the treatment of balloting materials that do not comply with the marking requirements. The Postal Service will actively assist election officials to comply with the applicable postal laws and regulations governing mail preparation and mailability. Information about USPS standards is available from postmasters, BME managers, the Pricing and Classification Service Center manager, and Postal Explorer[®] at *pe.usps.com*. Election officials also have the option of using Business Reply Mail service or establishing a “postage due” account in lieu of using the markings.

Some commenters questioned the treatment of ballots returned with insufficient postage. Generally, mail of any class received at either the office of mailing or office of address without enough postage is marked to show the total deficiency of postage and is delivered to the addressee on payment of the charges marked on the mail. If ballots are returned with insufficient postage, the

Postal Service will deliver these ballots to election officials and collect postage due from election officials who accept delivery of short paid ballots. The Postal Service recommends that all election officials have a postage due account for the payment of postage due or use Business Reply Mail service. If election officials decline to pay the postage due for short paid ballots, the ballots will be handled under the standards provided in DMM 604.8.0.

One commenter stated that implementation of the new standards would lead not only to increased printing costs, but also to voter disenfranchisement. To the contrary, the Postal Service anticipates that the new standards will improve the vote-by-mail process for all participants, and thus encourage an increase in voter participation. While some election officials have arrangements in place to process ballots with insufficient postage, many do not. Since each election cycle presents a different set of parameters for ballot creation and for the size and weight of the mail piece, we believe that voters need to be better informed of the correct postage required to return a ballot by mail. Informing voters will enhance the vote-by-mail process:

- Voters will know what postage is required to return their ballot and will be more likely to apply the correct First-Class Mail postage.
- Election officials will incur less expense to pay the postage due on returned ballots.
- The Postal Service will be able to process ballots in a timely manner and expedite their return to election officials, without the added delay and expense of calculating and collecting postage due.

In sum, the requirement to inform the voter about the correct postage required to return a ballot by mail has numerous benefits. The design and prominent placement of the notification will assist in this process. Election officials will have several options for compliance, including the choice to establish a postage due or Business Reply Mail account and can select the one they believe is the easiest and least costly to implement.

One commenter inquired regarding the treatment of matter sent as Free Matter for the Blind and Other Physically Handicapped Persons. Subject to the standards in DMM 703.5.0, acceptable matter sent to the blind or other physically handicapped persons may be entered as domestic mail free of postage. Under DMM 703.5.2, reading matter in braille or 14-point or larger sight-saving type is considered acceptable matter subject to opening and inspection by the USPS. In accordance with DMM 703.5.3 matter may also be mailed free of postage by blind or other physically handicapped persons. This matter includes unsealed letters in braille or in 14-point or larger sight-saving type containing no advertising. Where requested, the Postal Service will cooperate with election officials regarding any modification of the vote-by-mail process to accommodate the needs of blind or other physically handicapped voters.

Some additional comments were received, generally pertaining to mail classification, pricing, special exemptions, delivery, and postage payment methods. These comments have been deemed by the Postal Service to be beyond the scope of this rule.

In addition, based on subsequent communication with election officials, the Postal Service has revised its original proposal to include the prepayment of postage by stamps, meter, or Permit Reply Mail, as an additional exception to the marking standards.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111 — [AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

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***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

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700 Special Standards

[Revise the heading of 703 as follows:]

703 Nonprofit Standard Mail and/or Other Unique Eligibility

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[Revise the heading of 8.0 as follows:]

8.0 Balloting Materials

[Renumber 8.1 and 8.2 as 8.2 and 8.3. Add new 8.1 as follows:]

8.1 Basic Standards

8.1.1 Definition

Balloting materials include postcard applications, all ballot types, voting instructions, mailing instructions, and return envelopes.

8.1.2 Exceptions to Standards

An exception to the marking and verification standards in 8.1.3 through 8.1.5 is granted for one of the following reasons:

- a. Ballots are mailed under 8.2, Special Exemption.
- b. Ballots are returned under 505.1.0, Business Reply Mail.
- c. A postage due account has been established to guarantee the payment of return postage.
- d. Prepayment of return postage is made by stamps, meter, or Permit Reply Mail.

8.1.3 Postage

Except for ballots meeting one of the exceptions under 8.1.2, balloting materials for any election, whether disseminated hardcopy or electronically, must indicate in a prominent location that the proper amount of postage must be paid. This information must be included in the balloting materials with the marking "First-

Class Mail postage must be applied.” Alternatively, the marking “Apply First-Class Mail postage here” may be printed in the upper right corner of the address side of the return envelope. Approved versions will also be acceptable in either location. Election officials should consult with postal officials to assist with mailpiece design, barcode placement, and to determine the proper amount of postage required for mailing ballots to voters and the return of ballots to election officials.

8.1.4 Notification of Postage Requirement on Return Ballots

Except for ballots meeting one of the exceptions under 8.1.2, all ballot types for any election, whether disseminated hardcopy or electronically, must indicate in a prominent location on the balloting materials the specific amount of First-Class Mail postage required for return by mail to election officials.

8.1.5 Verification

Except for ballots meeting one of the exceptions under 8.1.2, each mailing must be accompanied by a complete sample mailpiece.

[Revise the heading of renumbered 8.2 as follows:]

8.2 Special Exemption

8.2.1 Definition

[Revise the introductory text of renumbered 8.2.1 as follows:]

Balloting materials may be sent through the mail without prepayment of postage to enable persons in the following categories to apply for registration and vote by absentee ballot when absent from the place of voting residence and otherwise eligible to vote as an absentee:

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[Delete renumbered heading 8.3, Marking, and renumber 8.3.1 as 8.2.5, Exhibit 8.3.1 as Exhibit 8.2.5, 8.3.2 as 8.2.6, Exhibit 8.3.2 as Exhibit 8.2.6, and 8.3.3 as 8.2.7.]

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We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

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